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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 412 (AT)

5 TIMOTHY SHEA,

6 Defendant.

Trial

7 -----x
8 June 2, 2022
9 9:50 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 District Judge
13 and a Jury

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: NICOLAS T. ROOS

ROBERT B. SOBELMAN

18 Assistant United States Attorneys

19 MERINGOLO & ASSOCIATES P.C.

Attorneys for Defendant

20 BY: JOHN C. MERINGOLO

ANGELICA B. CAPPELLINO

21 CLARA S. KALHOUS

22
23 Also Present: Sunny Drescher, Paralegal Specialist, USAO
24
25

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(Trial resumed; jury not present)

THE COURT: Good morning.

Would you make your appearances please.

MR. ROOS: Robert Sobelman and Nicolas Roos for the United States. We're joined at counsel table by Sunny Drescher, a paralegal in our office.

Good morning, your Honor.

MR. MERINGOLO: Good morning, your Honor.

John Meringolo, Anjelica Cappellino, and Clara Kalhous for Mr. Shea, who's to my right.

THE COURT: Please be seated.

I have a note from the jury. I received it at ten -- rather 9:45. It states the following: We the jury require the following, if possible:

One, missing bank statement for Ranch Property Marketing Management, RPMM; and Freedom Daily for the period of 3/1/2019 to 5/31/2019, or page where this exists in exhibits.

Two. Please provide a flipboard paper chart.

Three. All bank statements the defense lawyer used from Synovus Bank for the period of 3/1/2019 to 5/31/2019 or page where this exists in the exhibits.

Four. Missing texts from 12/15/18 to 11/7/2019.

It is signed by the foreperson and dated today's date.

I'm going to make this Court Exhibit No. 1.

So you're free to inspect this and let me know how you

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1 want me to deal with it. I'm going to wait for you to think
2 about it before I bring the jurors in.

3 MR. SOBELMAN: Your Honor, could we just get a copy of
4 it? Would that be possible?

5 THE COURT: Sure.

6 MR. SOBELMAN: Thank you.

7 THE COURT: You'll let Ms. Marder-Spiro know when
8 you're ready.

9 (Recess)

10 THE COURT: Please be seated.

11 All right, then. Where are you coming out on all of
12 this?

13 MR. ROOS: Thank you, your Honor.

14 If it's okay, I'll just go in number order.

15 THE COURT: Yes.

16 MR. ROOS: Number one, missing bank statements for
17 Ranch Property Marketing and Management and Freedom Daily for
18 the period of March 1, 2019 to May 31st, 2019.

19 So the first thing, I think it could be useful for the
20 Court to tell the jury that they have all of the bank records
21 in an electronic format, because it seems like from notes one
22 and notes three that they maybe don't know that they have the
23 bank records.

24 With sort of that general point aside, we have printed
25 the bank statements for -- that are in evidence that fall

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1 within this period for those two accounts. We are going to
2 show them to defense counsel and then we can pass them back.
3 So I think that should take care of request number one.

4 THE COURT: So when you say all the bank statements
5 that are in evidence, are you saying that not all of the
6 statements that fall in the period?

7 MR. ROOS: So for one of the two accounts, Ranch
8 Property, there's no March statement. I think that's because
9 actually maybe it was opened in either late March or early
10 April and didn't have account activity. But either way, we
11 only have April and May for that account.

12 THE COURT: Is there any agreement on whether or not
13 there is a statement for March?

14 MR. ROOS: I think we --

15 MR. MERINGOLO: No statement.

16 MR. ROOS: I think we all agree there's no statement
17 in evidence, and I'm not sure if one exists in the world.

18 The signature card was signed April 2nd, so the
19 account was opened April 2nd. So I guess --

20 THE COURT: Okay. So this is the Ranch Property
21 Management account in what bank?

22 MR. ROOS: At U.S. Bank.

23 THE COURT: At U.S. Bank, was open on April 2nd, so
24 there is no March statement.

25 MR. ROOS: Correct.

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1 THE COURT: April 2nd of what year?

2 MR. ROOS: Of 2019. And we are proposing to send back
3 to the jury, therefore, for that account the April and May
4 statements.

5 THE COURT: When you say that these records are
6 available electronically, how are they labeled?

7 MR. ROOS: So, Judge, basically, what was sent back to
8 the jury, there's a little manila folder for each of the
9 exhibits; is that right? And then for the bank statements
10 there just marked as like this -- they are on this -- it's a
11 drive? They are all on a drive. And then on the drive it has
12 the exhibit folders for the bank statements.

13 THE COURT: But is it identified as the exhibit? In
14 other words, does it say Exhibit Y or does it say bank
15 account --

16 MR. SOBELMAN: Your Honor, so it says -- for each one
17 there's a folder on the drive that says --

18 THE COURT: I'm going to ask you to back up, because
19 I'm old and this computer language is beyond me. And so when
20 they open up the laptop, what do they see?

21 MR. SOBELMAN: If they look on the drive --

22 THE COURT: When you say "the drive," what do you
23 mean?

24 MR. SOBELMAN: Sorry, a thumb drive.

25 THE COURT: Oh, there's a thumb drive that they have

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1 to insert.

2 MR. SOBELMAN: I believe it's already been loaded.

3 THE COURT: It's loaded? The clerks handled that.

4 THE LAW CLERK: If I could clarify, your Honor.

5 THE COURT: I just want to make it clear that Juliana
6 Bennington, my law clerk, is speaking now.

7 THE LAW CLERK: So there are two manila folders on the
8 desktop of their computer. One is labeled "Defense Exhibits"
9 and the other one, I believe, is labeled "Government Exhibits."
10 If they open the government exhibits folder, there are
11 subfolders within that. And there is a folder, I believe, for
12 each of the bank accounts.

13 MR. ROOS: And those are numbered 1000 through 2400.
14 And that's the full universe of bank statements. Each hundred
15 series is a different account.

16 THE COURT: But we are going to give them the April
17 and May statements in hard copy.

18 MR. ROOS: In hard copy.

19 What's in evidence, it spans, I think, several years
20 in some cases. And they have asked for a pretty specific
21 period, so we just printed out that period.

22 THE COURT: Okay.

23 MR. ROOS: So on the first point, your Honor, they'll
24 get the April and May statements for Ranch Property; and they
25 will get the March, April, and May statements for Freedom

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1 Daily.

2 THE COURT: Okay. Go ahead.

3 MR. ROOS: For request two, they asked for a flipboard
4 with paper. And we are fine with whatever the Court wants to
5 use, including that one over there, or anything else your Honor
6 would like to use.

7 MR. MERINGOLO: No objection.

8 THE COURT: Okay.

9 MR. ROOS: All right. The third one: All bank
10 statements the defense lawyer used from Synovus Bank for the
11 period March 1, 2019 to May 31st, 2019. So on this, the
12 Synovus Bank accounts are -- there are two Synovus Bank
13 accounts. They have those; again, they are on the computer.
14 And they are both for We Build the Wall.

15 I think in my summation I briefly referenced them; and
16 in the defense summation I don't believe they are referenced.
17 It said Mr. Meringolo referenced records from, I believe, U.S.
18 Bank.

19 MR. MERINGOLO: U.S. Bank.

20 MR. ROOS: So this one we could send back, the Synovus
21 Bank records; although I'm not positive that's what they are
22 asking for. And so it may make sense just to tell them
23 something like, The defense lawyer didn't use Synovus Bank
24 records.

25 THE COURT: I can say that he used the U.S. Bank

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1 records. But do we want to send them the U.S. Bank records
2 or --

3 MR. ROOS: We could just say --

4 MR. MERINGOLO: Yes, Judge, because that's what I
5 used.

6 THE COURT: Since they haven't asked for that
7 specifically, I would want the consent of the attorneys for me
8 to send that back.

9 MR. ROOS: Here's what I propose, your Honor: In
10 response to this request by the jury, we could say, The bank
11 accounts at Synovus Bank were the We Build the Wall accounts.
12 And those are Government Exhibits 1600 and 1700. The bank
13 records used by Mr. Meringolo, the defense attorney --

14 THE COURT: Okay. So if you'll just back up.

15 The Synovus Bank accounts are exhibits what did you
16 say?

17 MR. ROOS: 1600 and 1700.

18 THE COURT: Okay.

19 MR. ROOS: And then I propose saying, Mr. Meringolo,
20 the defense attorney, used records from U.S. Bank, which are
21 Government Exhibit 2000.

22 THE COURT: So are we sending in hard copies or no?

23 MR. ROOS: Well, on this I would propose to clarify
24 that for them and then ask them, Which would you like?

25 THE COURT: So a second note.

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1 MR. ROOS: If that's okay. Or we could print all of
2 those statements, the Synovus and the U.S. Bank, for the March
3 to May period.

4 MR. MERINGOLO: I wouldn't mind sending them Synovus
5 and U.S. Bank, because I used U.S. Bank and they're asking for
6 what I used. And they're also asking for Synovus.

7 THE COURT: Okay. So you agree that I will send back
8 the U.S. Bank records, which are Exhibit 2000; and the Synovus
9 records, which are 1600 and 1700.

10 MR. ROOS: For the period March to May.

11 THE COURT: U.S. Bank corresponds to what entity?

12 MR. ROOS: That is the defendant, Timothy Shea's, bank
13 account personally.

14 THE COURT: It's in his name.

15 MR. ROOS: Right. There's also -- I mean there's also
16 a U.S. Bank account in Ranch Property on which he's a signer;
17 but they already asked for that account for request one, so I
18 think probably they'll be getting that.

19 MR. MERINGOLO: I didn't use that one.

20 MR. ROOS: So we propose on request three, I guess,
21 then just giving them the March to May of U.S. Bank, and the
22 March to May of Synovus Bank in hard copy.

23 THE COURT: Okay.

24 MR. MERINGOLO: Your Honor, may I just interject?

25 We just wanted to clarify that the Freedom Daily -- I

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1 guess Freedom Daily from 3/1 to 5/31, the printed copy, is
2 going in?

3 MR. ROOS: Yes.

4 MR. MERINGOLO: Okay. I didn't hear.

5 THE COURT: I'm sorry. I didn't understand what you
6 said, Mr. Meringolo.

7 MR. ROOS: He just wanted to be sure that the Freedom
8 Daily bank records --

9 MR. MERINGOLO: Number one, it was Ranch and Freedom
10 Daily.

11 THE COURT: So for Ranch Property, it's April and May
12 with respect to number one. But for Freedom Daily, what
13 months?

14 MR. ROOS: It's March, April, and May of 2019.

15 THE COURT: And?

16 MR. ROOS: And then finally for request number four,
17 which is missing texts from December 15, 2018 to January 17,
18 2019. So the government would propose -- so first let me note
19 that Government Exhibits 2 through 20 are text messages that
20 are within that period. And the government's proposal is to
21 say Government Exhibit 2 through 20 are the text messages in
22 evidence from that period. Let us know if you are missing any
23 of them, just in case they're --

24 THE COURT: Well, I'm not asking -- I'm not asking
25 them if they are missing anything else; and so I think that's

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1 inconsistent.

2 MR. ROOS: It says missing texts from this period.
3 And so at least to me it's not clear to me, are they saying
4 there should be other texts they haven't seen or that literally
5 some of the texts that are in evidence during that period for
6 some reason either we or they misplaced the paper copy?

7 THE COURT: So they could also be saying we don't
8 think these are all of the texts that were exchanged between
9 the parties during this period.

10 MR. ROOS: Certainly.

11 So one proposal would be just to say the text messages
12 in evidence from that period are Government Exhibits 2 through
13 20, period. And then no further follow-up or question. And
14 then if they have another question, they will send it.

15 MR. MERINGOLO: Judge, may I confer with the
16 prosecutor?

17 THE COURT: Yes.

18 (Counsel conferred)

19 THE COURT: Where is the Freedom Daily account? What
20 bank is that with?

21 MR. ROOS: Wells Fargo.

22 THE COURT: Okay. So I just want to review what it is
23 that I am going to say to the jurors in response to their note.

24 With respect to number one, I'm going to say: All
25 bank records are in electronic form in the laptop. You will

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1 see one folder for government exhibits and one for defense
2 exhibits. In the government exhibits, the bank statements are
3 folders 1000 to 2400. The Ranch Property management account at
4 U.S. Bank was opened on April 2nd, 2019; there is no March
5 statement. Freedom Daily's account at Wells Fargo, there are
6 statements for March, April, and May. And then I'll say that
7 I'm going to send in paper copies of everything, that's what
8 you want me to say. So with respect to the U.S. Bank account,
9 it's April and May that I'll be sending in, right?

10 MR. ROOS: Correct.

11 THE COURT: With respect to question number two, I
12 will say yes.

13 With respect to question number three, I will say that
14 Mr. Meringolo referred to Timothy Shea's bank account at U.S.
15 Bank, which is Exhibit 2000; and that there are March, April,
16 and May statements in evidence. Also, that We Build the Wall
17 had an account at Synovus Bank, and that is Exhibits 1600 and
18 1700; and there are statements for March, April, and May. And
19 I will send in paper copies.

20 And for number four, the texts that are in evidence
21 that correspond to the period that they mention are Government
22 Exhibits 2 through 20, and I will send in hard copies.

23 MR. ROOS: They should have hard copies of those, your
24 Honor, or we could print more.

25 THE COURT: So am I volunteering or not to send in

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1 hard copies of these documents? It's up to you, folks.

2 MR. MERINGOLO: No, your Honor, I believe they have
3 them already.

4 THE COURT: So you're saying they have the hard copies
5 of 2 through 20, but they don't have the hard copies of the
6 others?

7 MR. ROOS: Correct.

8 THE COURT: Okay. So please bring in the jurors.

9 (Jury present)

10 THE COURT: The parties agree that all jurors are
11 present and properly seated?

12 MR. ROOS: Yes, your Honor.

13 MR. MERINGOLO: Yes, your Honor.

14 THE COURT: Please be seated.

15 Good morning, jurors.

16 THE JURY: Good morning.

17 THE COURT: Thank you for being on time and thank you
18 for your hard work.

19 I have a letter -- rather, a note from the jury; came
20 in at 9:45 a.m. And it is signed by the foreperson.

21 It states: We the jury require the following, if
22 possible:

23 Number one, missing bank statement for Ranch Property
24 Marketing Management, RPMM, and Freedom Daily for the period of
25 March 1st, 2019 to May 31st, 2019, or page where this exists in

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1 the exhibits.

2 Okay. So first of all, all bank records are in
3 electronic form on your laptop. If you open up the laptop,
4 you'll see one folder for the government exhibits and another
5 for the defense exhibits. In the government exhibits, bank
6 statements are in folders 1000 to 2400.

7 Ranch Property management had its account at U.S.
8 Bank. Ranch Property Management had its account at U.S. Bank.
9 That account was opened on April 2nd, 2019. There is no March
10 statement. So you have April and May. But I will also be
11 sending in a hard copy of the exhibits that I'm discussing at
12 this moment.

13 Freedom Daily's account was at Wells Fargo. Freedom
14 Daily's account was at Wells Fargo. And there are statements
15 from March, April, and May. I'm referring now to 2019 with
16 respect to all of these statements. And I will send in paper
17 copies of everything that you have requested in number one.

18 Number two: Please provide a flipboard paper chart.
19 I will do that.

20 Number three: All bank statements the defense lawyer
21 used from Synovus Bank for the period of March 1st, 2019 to
22 April 31st, 2019, or page where this exists in exhibits.

23 Mr. Meringolo referred to Timothy Shea's bank account
24 at U.S. Bank. Mr. Meringolo referred to Timothy Shea's bank
25 account at U.S. Bank. And that is Exhibit 2000. There are

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1 March, April, and May statements for 2019.

2 We Build the Wall had an account at Synovus Bank. We
3 Build the Wall had an account at Synovus Bank. And those are
4 Exhibits 1600 and 1700. And there are statements for March,
5 April, and May, again, corresponding to 2019. And I will send
6 in paper copies.

7 Number four, you ask for the missing texts from
8 December 15th, 2018 to January 17th, 2019. The texts that
9 correspond to that time period are in Government Exhibits 2
10 through 20, and you already have the hard copies of those
11 exhibits.

12 If you have any further questions or you want
13 something clarified, you can write me another note. So please
14 go back and continue your deliberations.

15 (Jury not present)

16 THE COURT: Please be seated.

17 We'll let you know if we get any further notes.

18 MR. ROOS: Thank you, your Honor.

19 We have everything printed. Mr. Sobelman is just
20 going to show defense counsel. And once they agree that it's
21 the statements for the relevant period, we'll give it to one of
22 your clerks to give to the jury.

23 THE COURT: All righty. Thank you.

24 (Recess pending verdict)

25 THE COURT: Please be seated.

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1 I have a second note from the jury. I received it at
2 11 a.m. It is signed by the foreperson and dated with today's
3 date. I'm making it Court Exhibit No. 2.

4 It states: We the jury have unanimously requested
5 [REDACTED] be replaced with an alternate juror for
6 the following:

7 A violation of oath claiming:

- 8 1. Political bias, "government witch-hunt."
- 9 2. Antigovernment bias, "Government tried in S.D.N.Y.
10 because they knew people here vote differently. Should have
11 been tried in a southern state."
- 12 3. Refusal to believe evidence is accurate, speaking
13 in hypotheticals about "what if more evidence exists."
- 14 4. "Tim Shea is a good man. He doesn't beat his
15 wife."
- 16 5. "You can't just vote to lynch someone."
- 17 6. He has accused all 11 jurors of having a verdict
18 before the evidence was presented. Not true at all.
- 19 7. Accused us all of being liberals.
- 20 8. Questioned the validity of testimony of the
21 prosecution evidence, venue.
- 22 9. Questioned the judge's interpretation.
- 23 10. Refuses to deliberate based on evidence.
- 24 11. Unable to understand and comprehend the charges
25 and instructions.

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Continued. Continued from page 1.

12. Juror claims, quote, other jurors are readily convicting him, the juror, and shows the hangman noose because jurors are New York residents.

13. Juror brings topics outside scope of evidence before prosecution/defense such as invoices, political parties' conversation that have not been entered into evidence.

These items we have all confirmed to have occurred.

So I will hand out a copy of the note, and I would like the parties to tell me how they would like me to proceed.

MR. ROOS: We need maybe, like, ten minutes to talk about it.

THE COURT: To discuss this?

Let me state that certainly one approach would be to invite [REDACTED], who is [REDACTED], to be questioned by myself. Another option is to question each of the jurors with respect to these claims. And, of course, I would want your opinion ultimately as to whether or not this juror should be replaced. So I will give you the time that you need.

MR. ROOS: Thank you, your Honor.

(Recess)

THE COURT: Please be seated.

I'll hear from the government first.

MR. SOBELMAN: Thank you, your Honor.

We would ask for the Court's indulgence for a little

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1 additional time. We actually had a similar issue arise in a
2 trial I handled a few months ago before Judge Furman. This
3 note is much more specific and particular; so we are going to
4 propose handling it in a slightly different way.

5 But there's a few Second Circuit cases that have dealt
6 with situations similar to this that we want to be able to send
7 to your Honor and have your Honor review, because it's a pretty
8 sensitive area; and inquiry, in the government's view, has to
9 be very targeted.

10 And so what we were hoping is to be able to go down to
11 our office, send you those cases very shortly, and also
12 potentially propose some questions for inquiry. Obviously
13 we'll copy the defense on what we send, and then your Honor can
14 proceed as your Honor wishes, perhaps make an inquiry of that
15 juror.

16 THE COURT: Mr. Meringolo.

17 MR. MERINGOLO: Judge, I honestly don't know what our
18 position is. We're going to research it. I have an ethical
19 duty to the client. I don't know if it's appropriate to ask
20 for a mistrial because of everything that's in here. I just
21 don't know. But we're going to do whatever is best for the
22 client.

23 The government, if they can provide hard copies of the
24 cases to us, we'll read them, and it is what it is. We're not
25 going to go against the Second Circuit, but we're also going to

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1 preserve the client's rights.

2 THE COURT: All right. So that's a fine way of going
3 forward. And I'll just wait to hear back from you.

4 MR. SOBELMAN: Thank you, your Honor. We'll do it as
5 expeditiously as we can.

6 Does your Honor prefer -- if we can email the Court
7 the cases and the list, is that acceptable?

8 THE COURT: That's perfectly fine.

9 MR. SOBELMAN: Thank you, your Honor.

10 THE COURT: Yes.

11 (Recess)

12 THE COURT: Would you please make your appearances.

13 MR. SOBELMAN: Robert Sobelman and Nicolas Roos,
14 United States. And we're joined at counsel table by Sunny
15 Drescher, a paralegal in our office.

16 Good afternoon, your Honor.

17 MR. MERINGOLO: Good afternoon, your Honor.

18 John Meringolo, Anjelica Cappellino, and Clara Kalhous
19 for Timothy Shea, who's to my right.

20 THE COURT: Please be seated.

21 First, I would like the court reporter to redact from
22 the transcript the name and the number of the juror who was
23 mentioned just before.

24 I received from the prosecution a list of questions
25 that they request that I ask. And they state that I should

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1 say: I'm going to ask you a series of questions. I'm not
2 going to ask you -- this would be put to the juror in question.
3 I am not going to ask you about the substance of what you said
4 during deliberations or the substance of what other jurors said
5 during deliberations. Please do not reveal your views of
6 whether the defendant is guilty or not guilty of any count or
7 your view of the evidence in this case.

8 1. What is your view of what role politics or
9 political views should play in reaching a verdict in this case?

10 2. Did you listen to and read my legal instructions?

11 3. Did you understand them?

12 4. What, if any, disagreements do you have with the
13 law as I have instructed you?

14 5. I have instructed you on your duty to deliberate.
15 What do you understand that duty to be?

16 6. Have you and are you continuing to consult with
17 your fellow jurors to deliberate with a view to reaching an
18 agreement?

19 7. I've instructed you on how the government may
20 satisfy the venue requirement for each of the three counts in
21 the indictment. What is your understanding of how the
22 government may satisfy that requirement?

23 8. Without telling me your view, do you have feelings
24 favoring or disfavoring the defendant or the government, such
25 as sympathy or prejudice? If so, what role should those

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1 feelings play in reaching a verdict in this case?

2 9. What role does potential punishment have in
3 reaching a verdict in this case?

4 I understand that the defense does not want me to pose
5 any questions to the juror.

6 MR. MERINGOLO: Yes, Judge.

7 Judge, for the record, we would respectfully request a
8 mistrial at this time. We know -- based on this note, we know
9 way too much about the deliberations. No one should know the
10 substance and secrecy of what's going on in any jury room.

11 The 11 jurors, whether intentional or accidental, it's
12 immaterial, but they violated your instructions, your Honor.
13 There is a lot of substantive information in these 13 points
14 with respect to what's going on in that jury room, and that
15 should never be because it should be secret. There should be
16 no notes discussing any type of deliberation.

17 We respectfully submit that this individual is being
18 targeted and singled out by the 11 jurors. In some of their
19 points he is actually deliberating. Ms. Cappellino and
20 Ms. Kalhous pulled in *Thomas*, 116 F.3d 621-22. If the record
21 evidence discloses any possibility that the request to
22 discharge stems from the jurors' view of the sufficiency of the
23 government's evidence, the Court must deny the request of the
24 questioning.

25 We believe the questioning of this juror is improper

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1 at this time. We would ask the Court to bring in the jury and
2 give them an instruction to go back and deliberate, and let the
3 Court know or let all the parties know if they can agree or
4 not, because I believe they bypassed the deadlock.

5 It appears -- from the note, it appears to be 11 to
6 one for conviction; I mean that's pretty much common sense.
7 This individual is questioning the venue and, I guess, the
8 government's evidence at certain points; and other points, it
9 is what it is, Judge.

10 But I think that prior to questioning him, I think we
11 have to bring the whole jury in and tell them. And if they are
12 deadlocked, then we give them the *Allen* Charge. I don't think
13 to just question this juror all by himself, it puts -- it just
14 puts the onus on him as if he's being singled out, when they
15 are accusing him of things, and in their letter he's accusing
16 them of things. And we shouldn't know any of this, Judge.

17 I've never dealt with an issue like this, so I
18 wouldn't know; I have nothing to go back on and cite. But, you
19 know, I think it's pretty clear from the *Thomas* case that even
20 though he has a position -- you know, some of his position it
21 appears that he was deliberating, he just doesn't believe the
22 venue. I'm not saying he's right or wrong, that's not for me
23 to say.

24 But respectfully, it should either be a mistrial,
25 because they disclosed way more than they should have, which

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1 violates the secrecy, and probably -- the 11 probably did this
2 innocently, accidentally, for whatever is going on in there,
3 which we know some things is going back and forth. If that's
4 not the case, Judge, I think we should bring them all out and
5 just give them that instruction before we question this
6 particular juror.

7 Okay. Thank you, Judge.

8 MR. SOBELMAN: Your Honor, respectfully, we disagree.

9 We think under the cases that we sent your Honor,
10 including *Thomas*, the predicate has been laid in this note to
11 believe that the juror may be violating his oath and not
12 following your Honor's legal instructions by refusing to
13 deliberate, by disregarding your Honor's legal instructions.
14 He doesn't have the option to do that. And we think your Honor
15 should clarify with the juror whether this impermissible way of
16 proceeding is what he's engaged in. And then once your Honor
17 gathers the facts, we can discuss whether it's appropriate for
18 him to be dismissed or not. We're not making an application
19 for him to be dismissed at this time, simply for your Honor to
20 make an inquiry about not the substance of the deliberations,
21 but whether the juror is following your Honor's instructions,
22 essentially.

23 Also, your Honor, just to be clear, the note, we think
24 defense counsel is misconstruing it. It doesn't say there
25 are -- one could read certain inferences into it, but it

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1 doesn't say the relative positions of the jurors; it doesn't
2 say -- it doesn't delve into discussions of elements or
3 particular pieces of evidence. And simply disclosing something
4 that's been discussed doesn't rise to the level of requiring or
5 necessitating a mistrial or any of that.

6 THE COURT: Mr. Meringolo.

7 MR. MERINGOLO: On number six, he, I guess meaning
8 [REDACTED] has accused all -- I mean, he has accused all 11
9 jurors of having a verdict before the evidence was presented,
10 and they say that's not true. So I think --

11 THE COURT: But it doesn't say what verdict --

12 MR. MERINGOLO: Well, he's --

13 THE COURT: -- or whether all 11 have the same
14 opinion.

15 MR. MERINGOLO: Well, they all say it's not true at
16 all. He doesn't say specifically guilt or innocent.

17 THE COURT: In other words, we can't conclude that all
18 of them are in favor of a guilty or a not guilty verdict. He
19 could be accusing those who are in favor of guilty and those
20 who are in favor of not guilty of having reached that decision
21 before they started deliberating.

22 MR. MERINGOLO: Right. But they also write in 8, he's
23 questioning the validity of the testimony of the prosecution's
24 evidence and venue. That's fine. That means he's
25 deliberating, if he's questioning evidence. I'm not saying

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1 he's right or wrong, but -- I'm not even saying what should be
2 even. I'm just -- we know too much from this note. We
3 shouldn't know any of this.

4 THE COURT: Right. I think that a number of the
5 government's questions may elicit comments concerning the
6 sufficiency of the evidence. And so I'm going to be calling
7 the jurors back in, I'm going to be reading the note to them.
8 I will then excuse them to the jury room. And then I, as well
9 as the attorneys, will go into the robing room, and I will ask
10 some questions of the juror in question.

11 And this is what I'm going to say:

12 I'm going to say: I'm going to ask you some
13 questions. Under the law, the deliberations of a jury are
14 secret. This secrecy is extremely important. So in answering
15 my questions, do not tell me what you said during
16 deliberations. Do not tell me what the other jurors said. Do
17 not tell me your opinion or the opinion of the other jurors
18 about whether the defendant is guilty or not guilty. Do not
19 tell me your opinion about the sufficiency of the evidence.

20 Please let me finish asking questions before you begin
21 speaking.

22 Do you have any biases or personal views that prevent
23 you from being a fair and impartial juror in this case, without
24 saying anything about the evidence or the jury's deliberations?
25 What are they? What is the origin of these views?

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1 As I stated during jury selection, you are required to
2 accept the law as I explain it to you. It is your job to
3 determine the facts subject to my explanation of the law. Even
4 if you disagree with me or the law, can you follow that
5 instruction?

6 As I stated before deliberations, you are required to
7 consult with your fellow jurors and to deliberate with a view
8 to reaching an agreement. You must also decide the case for
9 yourself, but only after an impartial consideration of the
10 evidence with your fellow jurors, again, without saying
11 anything about the jury's deliberations or your view of the
12 sufficiency of the evidence. Can you follow those
13 instructions?

14 So if you'd have the jurors brought in, please.

15 MR. MERINGOLO: Judge, for the record --

16 THE COURT: One moment, please. If you'll just hold
17 off for a moment, please. One moment.

18 MR. MERINGOLO: I'm sorry.

19 Judge, for the record, we have to object.

20 MR. ROOS: I'm sorry, for the record, what's the
21 objection?

22 MR. MERINGOLO: Object to any of the questions.

23 MR. ROOS: Just so we understand, what's the basis of
24 the objection?

25 THE COURT: He just gave his argument as to why he

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1 does not believe I should ask the questions.

2 MR. ROOS: Understood, your Honor. I was just trying
3 to understand if Mr. Meringolo was objecting generally to the
4 questioning or to your Honor's questions, which were obviously
5 different than the government's questions, whether it's
6 substance or the entire procedure.

7 MR. MERINGOLO: For the record, Judge, we'll just be
8 broad on any questions. We object. We have to do this.

9 THE COURT: All righty.

10 If you'll have the jurors come in, please.

11 (Jury present)

12 THE COURT: Do the parties agree that all jurors are
13 present and properly seated?

14 MR. SOBELMAN: Yes, your Honor.

15 MR. MERINGOLO: Yes, your Honor.

16 THE COURT: Please be seated.

17 Members of the jury, I received a second note from you
18 which I'm going to read. It says:

19 We the jury have unanimously requested – and I'm not
20 going to mention the number or the name of the juror at this
21 time – that that individual be replaced with an alternate juror
22 for the following: A violation of oath claiming:

23 1. Political bias --

24 MR. SOBELMAN: Your Honor, I'm so sorry to interrupt,
25 but I'm not sure whether your Honor intended for the alternate

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1 jurors to be present for this colloquy.

2 THE COURT: If you'll step up please.

3 (At sidebar)

4 THE COURT: So I generally do not exclude the
5 alternates when reading a jury note. What would be the ground
6 for doing it?

7 MR. SOBELMAN: We're just concerned that if your Honor
8 is then going to -- let's say the way this plays out is this
9 juror is removed for some reason. If your Honor ends up
10 removing him and one of the alternates is introduced to the
11 jury and they have to begin deliberating again, we just want to
12 make sure there's no issue with that juror's understanding or
13 recollection being tainted by this process.

14 If defense has no objection, I don't think we have an
15 issue. We just wanted to raise it. I'm sorry for not thinking
16 of it until your Honor began to read the note.

17 THE COURT: Is your concern that the note would reveal
18 something that the alternates should not hear?

19 MR. SOBELMAN: Your Honor, there are comments about
20 the deliberations, although obviously not the sort of key
21 substance as we just discussed on the record. But generally,
22 if an alternate is placed on a deliberating jury, the jury is
23 instructed they have to start the deliberations over again.

24 I just don't know whether your Honor would want the
25 alternate to have heard this process and the substance of this

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1 particular note, depending on how things play out. Again, we
2 don't have a specific concern; we just want to make sure it's
3 something the parties had been aware of and the Court had
4 thought through before we proceeded.

5 MR. MERINGOLO: For the record, your Honor, we would
6 reiterate that the note -- because of this issue and because of
7 the sidebar, we would reiterate that the note is problematic
8 and violated the sanctity of the jury, and we would move for a
9 mistrial again. I don't believe that -- I don't know of
10 whether the jurors should listen to this or not. Every note --
11 Judge, this is the first time this happened. Every note is
12 always read, if there are alternates, they hear it. But this
13 is a little different note.

14 Our position is the mistrial on the note. So I guess
15 we'll do whatever -- you know, that's been overruled; so we'll
16 do whatever the Court feels just with the alternates, right?

17 MS. CAPPELLINO: We'll just reiterate, your Honor, and
18 we can understand the government's interpretation and the
19 Court's, but I do believe a reasonable reading of the note
20 would strongly suggest it is very firmly 11-1 for a conviction.
21 We believe that the alternates should not be present for the
22 reading of the note since that may create, I think, obvious
23 bias.

24 THE COURT: Certainly my excluding the alternates
25 would suggest that I agree with that position.

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1 MR. SOBELMAN: We don't think that that's the way the
2 note reads, but it does say things about the way in which the
3 jurors are interacting with each other.

4 And again, we don't have a firm view of whether the
5 alternates should be present or not. Often alternates aren't
6 kept waiting at the courthouse; they are sent home during
7 deliberations anyway, so this issue doesn't arise very often.

8 But for this particular note, we just want to make
9 sure the Court had considered whether there might be an issue
10 with them hearing the note. Again, we don't have a particular
11 concern, because your Honor has and will continue to instruct
12 them on how to properly deliberate, and we assume they will
13 follow those instructions. But this is sort of an unusual note
14 and we just wanted to make sure the Court was comfortable with
15 them being in the room.

16 THE COURT: But you're not taking any position.

17 MR. ROOS: I think if the defense has no objection,
18 then we are fine with it.

19 MR. SOBELMAN: It wasn't clear whether they objected
20 to that.

21 MS. CAPPELLINO: We clearly object to them being here.
22 I think the note is very clear. This man is apparently being
23 quoted saying, You can't just vote to lynch someone. Then the
24 next number says -- he accuses all 11 jurors of having a
25 verdict before the evidence presented. Granted, he does not

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1 specifically say which way he's voting, but I do not believe
2 that this is subject to interpretation. In that case I do
3 believe it prejudices the alternates that are listening to
4 this. They know what they are walking into. They wrote this
5 note. I do not see any other reason --

6 MR. SOBELMAN: Regardless of the reading of the note,
7 we would prefer that the alternates not be present for the
8 note, as we don't think -- they are not sitting on the jury
9 currently, and there's no real benefit to them, I think, to
10 hearing the note be read. In the event that one of them is
11 placed on the jury, deliberations will start again and the note
12 will sort of be in the past.

13 THE COURT: All right. I will excuse them.

14 MR. SOBELMAN: Thank you, your Honor.

15 (In open court)

16 THE COURT: I'm going to excuse the alternate jurors
17 from this particular aspect of the proceeding, but you are to
18 remain in the courthouse.

19 (Alternate jurors not present)

20 THE COURT: I'm going to start the note again.

21 We the jury have unanimously requested that a certain
22 individual juror be replaced with an alternate juror for the
23 following: A violation of oath claiming:

- 24 1. Political bias, "government witch-hunt."
25 2. Antigovernment bias, "Government tried in S.D.N.Y."

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1 because they knew people here vote differently. Should have
2 been tried in a southern state."

3 3. Refusal to believe evidence is accurate. Speaking
4 in hypotheticals about "what if more evidence exists."

5 4. "Tim Shea is a good man. He doesn't beat his
6 wife."

7 5. "You can't just vote to lynch someone."

8 6. He has accused all 11 jurors of having a verdict
9 before the evidence was presented. Not true at all.

10 7. Accused us all of being liberals.

11 8. Questioned the validity of testimony of the
12 prosecution evidence, venue.

13 9. Questioned the judge's interpretation.

14 10. Refuses to deliberate based on evidence.

15 11. Unable to understand and comprehend the charges
16 and instructions.

17 Continued.

18 Continued from page 1.

19 12. Juror claims "other jurors are readily convicting
20 him (the juror) and shows the hangman noose because jurors are
21 New York residents."

22 13. Juror brings topics outside the scope of evidence
23 (before prosecution/defense) such as invoices, political
24 parties' conversation that have not been entered into evidence.

25 These items we have all confirmed to have occurred.

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1 And it's signed by the foreperson and dated today's
2 date.

3 I'm going to excuse the jurors at this point. You'll
4 be going back into the jury room and you will wait my further
5 instructions. And while you're waiting, do not deliberate.
6 Don't discuss the case amongst yourselves or with anyone else.
7 Do not deliberate until I tell you to start deliberating again.

8 (Jury not present)

9 THE COURT: So now the attorneys and Mr. Shea will
10 join me in the robing room.

11 (In the robing room)

12 (Juror present)

13 THE COURT: Please take a seat right here. Please be
14 seated. You can remove your mask.

15 [REDACTED], is that your name?

16 JUROR: Yes, ma'am, appreciate it.

17 THE COURT: I'm going to ask you some questions.

18 Under the law, the deliberations of a jury are secret.
19 The secrecy is extremely important. So in answering my
20 questions, do not tell me what you said during deliberations.
21 Do not tell me what the other jurors said. Do not tell me your
22 opinion or the opinion of the other jurors about whether the
23 defendant is guilty or not guilty. Do not tell me your opinion
24 about the sufficiency of the evidence.

25 I'm going to repeat that, what I just said, because

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1 it's extremely important that you not say certain things.

2 Do not tell me what you said during deliberations. Do
3 not tell me what the other jurors said. Do not tell me your
4 opinion or the opinion of the other jurors about whether the
5 defendant is guilty or not guilty. Do not tell me your opinion
6 about the sufficiency of the evidence. Of course, you are not
7 to tell me about the others' opinions concerning the
8 sufficiency of the evidence either.

9 Please let me finish asking my questions before you
10 answer.

11 Do you have any biases or personal views that prevent
12 you from being a fair and impartial juror in this case?

13 JUROR: No, I don't.

14 THE COURT: As I said during jury selection, you are
15 required to accept the law as I explain it to you. Your job is
16 to determine the facts subject to my explanation of the law,
17 even if you disagree with me or the law.

18 Can you follow that instruction?

19 JUROR: Yes, I do.

20 THE COURT: As I said earlier, you are required to
21 consult with your fellow jurors and to deliberate with a view
22 to reaching an agreement. You must also decide the case for
23 yourself, but only after an impartial consideration of the
24 evidence with your fellow jurors.

25 Again, without saying anything about the jury's

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1 deliberations or your view of the sufficiency of the evidence,
2 can you follow those instructions?

3 JUROR: Yes, I do.

4 THE COURT: Okay. Thank you. You may step out.

5 (Juror not present)

6 THE COURT: So [REDACTED] has not said anything
7 that would disqualify him as a juror, and I am not going to
8 replace him. I'm going to bring the jurors in and tell them to
9 continue deliberating.

10 (In open court)

11 THE COURT: Would you have the jurors return, please.

12 (Jury present)

13 THE COURT: Do the parties agree that all jurors are
14 present and properly seated?

15 MR. SOBELMAN: Yes, your Honor.

16 MR. MERINGOLO: Yes, Judge.

17 THE COURT: Please be seated.

18 Members of the jury, I want you to know that I have
19 considered your note and I'm directing you to return to the
20 jury room and recommence deliberations.

21 (Jury not present)

22 THE COURT: All righty.

23 So I will let you know if we get another note.

24 MR. SOBELMAN: Thank you, your Honor.

25 (Recess pending verdict)

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1 THE COURT: Please be seated.

2 I have received a third note from the jury. It came
3 in at 3:40 p.m. I have marked it as Court Exhibit No. 3. It
4 is signed and dated by the foreperson.

5 It says: We the jury, we cannot agree on a unanimous
6 verdict on any of the counts. Please advise. Should each
7 juror complete a verdict form or should we submit the general
8 verdict form?

9 Do you want me to give an *Allen* charge?

10 MR. MERINGOLO: The defense does not, your Honor.

11 MR. SOBELMAN: The government does, your Honor. We're
12 happy to propose some language if you'll give us a few minutes.

13 THE COURT: I'll consider it.

14 MR. SOBELMAN: Give us a few minutes?

15 THE COURT: Yes.

16 MR. SOBELMAN: Should we send it to your chambers in a
17 Word document, sort of like the questions?

18 THE COURT: You can do that.

19 MR. SOBELMAN: Okay. We will, your Honor. Thank you.

20 THE COURT: Yes.

21 (Recess)

22 THE COURT: Please be seated.

23 All right. Thank you for your submissions. I'm going
24 to have the jurors come in and address them.

25 MR. MERINGOLO: Your Honor, we just want to quickly

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1 object to any *Allen* charge. We believe this is a secondary
2 note of what the jury is intending to do. Social media now is
3 having the gentleman number four's name all over it, and we
4 believe that could be a big problem overnight, whether people
5 contact him about that, and obviously this is a politically
6 charged issue.

7 So we respectfully -- we've been waiting here for 40
8 minutes for the *Allen* charge from the government to send
9 something. We think the jury is done and, in the interest of
10 their time and not coming back tomorrow morning, we would
11 request that the Court enter a mistrial order.

12 THE COURT: I'm going to be giving a charge.

13 (Jury present)

14 THE COURT: Do the parties agree that all jurors are
15 present and properly seated?

16 MR. SOBELMAN: Yes, your Honor.

17 MR. MERINGOLO: Yes, your Honor.

18 THE COURT: Please be seated.

19 I have another note from the jury.

20 It says: We the jury, we cannot agree on a unanimous
21 verdict on any of the counts. Please advise. Should each
22 juror complete a verdict form or should we submit the general
23 verdict form?

24 A verdict form would only be used if and when you
25 reach a unanimous verdict. So that would only be one.

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1 I understand from your note that you have been unable
2 to reach a unanimous verdict. As I told you in my initial
3 instructions, any verdict you return must be unanimous. If you
4 cannot reach a unanimous agreement, you cannot return a verdict
5 and a new trial will have to be scheduled before a different
6 jury.

7 It is not uncommon for a jury to have difficulty
8 initially in reaching a unanimous verdict. It is not uncommon
9 for a jury to believe that they will never be able to reach a
10 unanimous verdict. But after further deliberation, most juries
11 are able to reach a unanimous verdict. And so I'm going to ask
12 you to continue your deliberations.

13 But before I do, I want to remind you that when this
14 trial began, many prospective jurors were called and
15 questioned. Many were excused for one reason or another. But
16 you were selected to serve. That means that of all the
17 prospective jurors called in this case, you were the ones in
18 whom both sides expressed confidence. Both sides were
19 convinced that each of you would be fair and impartial; that
20 each of you would listen carefully to the evidence, to the
21 arguments, and to the law; and that each of you would
22 deliberate with your fellow jurors and work hard to reach a
23 unanimous verdict that was consistent with the law and the
24 evidence.

25 I continue to have confidence in you.

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1 At the beginning of the case, you each took an oath to
2 well and truly try this issue and a true verdict give according
3 to the law and the evidence. Pursuant to that oath, each of
4 you has a duty to deliberate. That entails a duty to consult
5 one another, to consider each other's views with an open mind,
6 and to discuss the evidence with the objective of reaching a
7 just verdict. Under your oath as jurors, you are not to be
8 swayed by sympathy, emotion, or political views or opinions.
9 You should be guided solely by the evidence presented during
10 the trial and the law as I give it to you, without regard to
11 the consequences of your decision.

12 You've been chosen to try the issues of fact and reach
13 a verdict on the basis of the evidence or lack of evidence. If
14 you let sympathy, emotion, or political views or opinions
15 interfere with your clear thinking, there is a risk that you
16 will not arrive at a just verdict. You must make a fair and
17 impartial decision so that you will arrive at the just verdict.

18 You are a superb jury. If we have a retrial of this
19 case before a new jury, we could not find people any more
20 intelligent, reasonable, hardworking, or fair than you are. I
21 want to emphasize that. I'm not asking any juror to violate
22 his or her conscience or to abandon his or her best judgment.
23 Any verdict you reach must be the verdict of each juror and not
24 mere acquiescence in the conclusion of others.

25 I'm asking you to continue to deliberate and to resume

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1 your deliberations with an open mind. Start with a fresh
2 slate. Do not feel bound by how you felt before. Have the
3 courage to be flexible. Be willing to change your position if
4 a reevaluation of the evidence convinces you that a change is
5 appropriate. Do not adhere to an opinion or conclusion that
6 you no longer believe is correct.

7 However, if you are convinced that you are correct,
8 you may stand your ground and not change your position. Be
9 honest with yourselves and with the other jurors. Listen to
10 the other jurors and evaluate what they have to say. Do not
11 let anything prevent you from carefully considering what they
12 say. Remember that each of you made a commitment when you
13 became a juror that requires you to reason and deliberate
14 together to reach a fair and just verdict based only on the
15 evidence. Of course, while a discussion among jurors may at
16 times be intense, I am sure you understand that it can and
17 should also be respectful of the feelings and opinions of the
18 other jurors.

19 I urge that each of you make every possible effort.
20 Make certain that the decision you reach is based solely on the
21 evidence and the law and is not influenced or affected by
22 sympathy for or against any individual or for or against either
23 side. Be sure that no baseless speculation, no bias or
24 prejudice for or against any individual enters into your
25 deliberations.

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1 If I can help you in any way, whether through a
2 readback or through clarification or restatement of the law, I
3 am ready to do so. Again, please make every effort, consistent
4 with your conscience and the evidence in this case, to
5 harmonize your views and decisions with those of the other
6 jurors to the best of your ability. I ask you to apply common
7 sense and good judgment.

8 I remind you that your verdict must be unanimous.
9 Further, you are reminded that if at any time you are not in
10 agreement, you are not to reveal the positions of the jurors –
11 including the split of the vote – to anyone, including me, at
12 any time during your deliberations.

13 Finally, I appreciate that the process of
14 deliberations can be difficult. Frankly, it wasn't intended to
15 be easy. So in accord with your oath, please continue to
16 deliberate with a view toward reaching a verdict.

17 I will excuse you for the day. You'll return tomorrow
18 at 9 o'clock, as usual. And when Juror No. 1 states that the
19 deliberations are to recommence, you will recommence
20 deliberating. But you are not to discuss the case now amongst
21 yourselves or with anyone else; you are not to permit anyone to
22 discuss the case in your presence; and you are not to read or
23 listen to or view any form of news or other information
24 concerning this case.

25 Have a good evening.

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(Jury not present)

THE COURT: Please be seated.

Is there anything further for today?

MR. SOBELMAN: Not from the government, your Honor.

MR. MERINGOLO: Your Honor, just for the record, I
have to object to that *Allen* charge based on *U.S. v. Hayes*, (2d
Cir. 2013).

Thank you much, Judge.

THE COURT: All righty. Have a good evening.

(Adjourned to June 3, 2022 at 9 o'clock a.m.)